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8 ISOLATION NETWORK, INC.
D/B/A INGROOVES

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ISOLATION NETWORK, INC. d/b/a
INGROOVES, a California
corporation,

Plaintiff,

vs.

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, a Georgia
corporation, and DOES 1-10, inclusive,

Defendants.

Case No.

COMPLAINT FOR:

- 1. BREACH OF CONTRACT**
- 2. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**
- 3. DECLARATORY RELIEF**

JURY TRIAL DEMANDED

1 Plaintiff Isolation Network, Inc. d/b/a INgrooves (“INgrooves”), by and
 2 through its undersigned counsel, alleges against defendant Westchester Surplus
 3 Lines Insurance Company (“Defendant”) as follows:

4 **NATURE OF ACTION AND RELIEF SOUGHT**

5 1. Under California law, every insurer owes an implied duty not to
 6 unreasonably withhold benefits due to an insured. *Gruenberg v. Aetna Ins. Co.*,
 7 9 Cal. 3d 566, 575 (1973). Defendant has violated that duty, and its express
 8 contractual obligations to INgrooves, by denying coverage to INgrooves under
 9 Digital Technology and Professional Liability Policy No. G24203529 002 (the
 10 “Policy”). A true and correct copy of the Policy is attached hereto as **Exhibit A**
 11 and is incorporated herein by reference.

12 2. INgrooves is a digital music aggregator. It acts as a conduit for
 13 distribution of artists’ music through digital music stores and streaming platforms
 14 such as GooglePlay, iTunes, Spotify, and Amazon. In general, INgrooves bundles
 15 digital rights consisting of copyrights in sound recordings and performers’ rights,
 16 and delivers them to digital music retailers. INgrooves facilitates the distribution of
 17 digital music content for independent labels, established artists, and other content
 18 owners.

19 3. At all relevant times, INgrooves was insured under the Policy sold to it
 20 by Defendant. The Policy promised a broad range of protections to INgrooves,
 21 such as coverage of defense costs and indemnity for certain “Wrongful Acts,”
 22 including activities resulting in “Media Injury.”

23 4. While the Policy was in effect, certain digital music stores and
 24 streaming platforms sent notices to INgrooves demanding that INgrooves defend
 25 and indemnify them in connection with a putative class action filed in 2012,
 26 allegedly involving musical content distributed by INgrooves entitled *Blagman v.*
 27 *Apple Inc. et al.*, Case No. 12-cv-5453 (ALC) (S.D.N.Y.) (the “*Blagman* suit”).

1 The music retailers named as defendants in the *Blagman* suit were Apple Inc.,
 2 Amazon.com Inc., Google Inc., eMusic.com Inc., and Microsoft Corporation
 3 (collectively, the “Retailers”). The plaintiff in the *Blagman* suit asserted copyright
 4 infringement claims against the Retailers based upon their allegedly unlicensed or
 5 unauthorized reproduction, distribution, and sale of copyrighted musical
 6 compositions owned by the plaintiff and the putative class members. Each of these
 7 entities (except Amazon.com Inc.), sent demands to INgrooves in 2012, seeking
 8 indemnification pursuant to the indemnification provisions and representations and
 9 warranties in their respective distribution agreements with INgrooves. INgrooves
 10 timely notified Defendant of the Retailers’ indemnification demands.

11 5. The *Blagman* suit was settled in January 2016. To date, two of the
 12 five Retailers (Google and Microsoft) have made specific monetary demands to
 13 INgrooves for indemnification of portions of their defense fees and settlement
 14 sums.

15 6. As the *Blagman* suit was being settled, Defendant initially
 16 acknowledged its defense obligations to INgrooves in a letter dated December
 17 2015. However, in August 2016, Defendant suddenly reversed course and denied
 18 coverage based on a breach of contract exclusion in the Policy.

19 7. INgrooves repeatedly has asked Defendant to provide coverage to
 20 INgrooves pursuant to Insuring Agreement B, titled “Electronic Media Activities
 21 Liability,” and repeatedly has explained why Defendant’s coverage denial is
 22 wrongful. Specifically, the breach of contract exclusion does not apply given the
 23 specific grant of coverage in an endorsement to the Policy, which adds coverage for
 24 breach of contract claims arising out of the submission of musical content —
 25 precisely the type of claims asserted against INgrooves here by the Retailers.
 26 Nevertheless, Defendant has refused to reconsider its coverage denial or to extend
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coverage to INgrooves. Thus, Defendant has breached its express coverage obligations to INgrooves under the Policy.

8. Defendant also has breached the implied covenant of good faith and fair dealing by, among other things, failing to conduct a reasonable investigation of INgrooves' coverage claim and carrying out a campaign of delay and nonresponsiveness. The parties' pre-lawsuit correspondence is rife with examples of Defendant's lack of responsiveness and dilatory tactics in the face of INgrooves' repeated requests for a coverage determination and for updates regarding coverage status. Defendant has acted unreasonably also by focusing on irrelevant and collateral issues such as subrogation, relying on spurious arguments to justify its coverage denial, and favoring its own interests above INgrooves' interests.

THE PARTIES

9. INgrooves is a corporation organized and existing under the laws of the State of California, with its principal place of business in Encino, California.

10. INgrooves is informed and believes, and on that basis alleges, that Defendant is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business in Philadelphia, Pennsylvania. Defendant is authorized to transact, and is transacting, business in the State of California and the County of Los Angeles. INgrooves is informed and believes, and on that basis alleges, that Defendant was formerly one of the ACE Group of insurers, and became one of the Chubb Group of Insurance Companies after ACE purchased Chubb. ACE is now known as Chubb.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over the claims in this action under 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship between INgrooves and Defendant, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

1 12. Venue is proper in this judicial district under 28 U.S.C. §§ 1331(b)(1),
 2 (c), and (d) because Defendant is a resident of this district, in that it has the capacity
 3 to sue and be sued in its common name under applicable law, and is subject to the
 4 Court's personal jurisdiction with respect to this action. Venue is proper in this
 5 judicial district also under 28 U.S.C. § 1331(b)(2) because a substantial part of the
 6 events or omissions giving rise to the claims in this action occurred in this district.
 7 Venue is proper in this judicial district also under 28 U.S.C. § 1331(b)(3) because
 8 Defendant is subject to the Court's personal jurisdiction.

9 **THE RELEVANT COVERAGE TERMS UNDER THE POLICY**

10 13. INgrooves purchased the Policy from Defendant in April 2012.
 11 INgrooves paid significant premiums to Defendant under the Policy. The Policy
 12 was in effect from April 23, 2012 to April 23, 2013.

13 14. Insuring Agreement B, titled "Electronic Media Activities Liability,"
 14 provides up to \$5 million in coverage to INgrooves for
 15 Damages and Claims Expenses by reason of a Claim first made
 16 against the Insured during the Policy Period and reported to the
 17 Insurer pursuant to Section VIII, Notice, for any Wrongful Acts taking
 18 place after the Retroactive Date and prior to the end of the Policy
 19 Period.

20 (Ex. A § I.B.)

21 15. The Policy defines "Damages" to include "compensatory damages . . .
 22 and settlements which the Insured becomes legally obligated to pay on account of
 23 any Claim first made against any Insured during the Policy Period . . . for Wrongful
 24 Acts to which this Policy applies." (*Id.* § II.I.) Under the plain terms of the Policy,
 25 any amounts that INgrooves must pay to the Retailers as indemnification for
 26 settlement of the *Blagman* suit constitute Damages under the Policy.

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1 16. The Policy defines “Claims Expenses” to mean, in pertinent part,
 2 “reasonable and necessary attorneys’ fees . . . and other fees and costs incurred by
 3 . . . the Insured with the Insurer’s prior written consent, in the investigation and
 4 defense of a covered Claim.” (*Id.* § II.F.)

5 17. The Policy defines “Claim” to include “a written demand against any
 6 Insured for monetary or non-monetary damages.” (*Id.* § II.E.) The Retailers’
 7 indemnification demands to INgrooves easily satisfy this definition and constitute
 8 Claims under the Policy.

9 18. Those Claims, in turn, arise out of alleged “Wrongful Acts” that took
 10 place after the “Retroactive Date” (April 23, 2007) and before the end of the
 11 “Policy Period” (April 23, 2013), in accordance with Insuring Agreement B. The
 12 Policy defines “Wrongful Act” to mean

13 any error, misstatement, misleading statement, act, omission,
 14 neglect, breach of duty, or Personal Injury offense, actually or
 15 allegedly committed or attempted by any Insured in their capacity
 16 as such . . . in the course of the provision of Electronic Media
 17 Activities, which gives rise to any of the following Claims against
 18 an Insured:

19 . . .

20 Media Injury.

21 (*Id.* § II.OO.2, as amended by Media Injury Endorsement § B.3.)

22 19. “Media Injury” means, among other things:

23 a. infringement of copyright, plagiarism, piracy or
 24 misappropriation of ideas; [or]

25 . . .

26 c. ***breach of any express or implied contract arising out of
 27 the actual or alleged submission of any material, idea or***

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1 **process** (including any newsworthy, literary, dramatic,
 2 musical, audio visual, visual or other similar or analogous
 3 material or process used by the Insured or others).

4 (*Id.*, Media Injury Endorsement § 1.A (emphasis added).)

5 20. “Electronic Media Activities” are defined to include “the electronic . . .
 6 dissemination, releasing, gathering, transmission, production, . . . or other
 7 distribution of Electronic Content on the Internet on behalf of the Insured or by the
 8 Insured for others.” (*Id.* § II.M.) Subject to certain inapplicable exceptions,
 9 “Electronic Content” means, in pertinent part, “any **data**, text, **sounds**, images or
 10 similar matter **disseminated electronically**. . . .” (*Id.* § II.L (emphasis added).)

11 21. Electronic Media Activities also consist of “Media Services” pursuant
 12 to the “Media Injury Endorsement.” (*Id.*, Media Injury Endorsement § 1.B.2.)
 13 “Media Services” mean “Advertising, Broadcasting, and Publishing.” (*Id.* § 1.A.)
 14 “Publishing,” in turn, is defined to mean “publication, republication, serialization,
 15 exhibition **or distribution** of Matter.” (*Id.* (emphasis added).) “Matter,” in turn, is
 16 defined as

17 [a]ny communication, regardless of its form, including advertising,
 18 art, creative expression, **data**, entertainment, film, facts, fiction,
 19 graphics, literary composition, **music**, news, photographs, pictures,
 20 opinions, **sound recordings** and video, **and the use of such matter by**
 21 **others with permission of the Insured**.

22 (*Id.* (emphasis added).)

23 22. In sum, Insuring Agreement B affords coverage to INgrooves for
 24 Damages and Claims Expenses, including compensatory damages and settlement
 25 amounts, that INgrooves becomes legally obligated to pay on account of any Claim
 26 made against it for Wrongful Acts. The Retailers’ indemnification demands are
 27 Claims arising from Wrongful Acts because they arise out of INgrooves’ alleged

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1 errors, acts, omissions, and breaches of duty in the course of Electronic Media
 2 Activities — namely, the publication, dissemination, and distribution of both digital
 3 and musical content, including digital sound recordings, to the Retailers.
 4 Accordingly, the Retailers' indemnification claims against INgrooves constitute
 5 Claims arising out of Electronic Media Activities, which are directly covered under
 6 Insuring Agreement B of the Policy.

7 23. The Policy also contains an exclusion precluding coverage of any
 8 Claim:

9 [f]or breach of any express, implied, actual or constructive
 10 contract, warranty, guarantee, or promise, including any actual or
 11 alleged liability assumed by the Insured, unless such liability
 12 would have attached to such Insured even in the absence of such
 13 contract, warranty, guarantee, or promise.

14 (*Id.* § III.C (the "Contract Exclusion").)

15 24. The Contract Exclusion does not apply, however, to any claim that
 16 conflicts with the specific coverage afforded under the Media Injury Endorsement
 17 of the Policy. Indeed, the Media Injury Endorsement expands coverage to
 18 INgrooves by specifically *adding* coverage for breach of contract claims arising out
 19 of the submission of musical content.

20 25. Thus, the Policy specifically provides coverage to INgrooves for
 21 claims concerning "breach of any express or implied contract arising out of the
 22 actual or alleged submission of any material, idea or process." The indemnification
 23 demands asserted against INgrooves constitute precisely such claims.

24 **THE RETAILERS' INDEMNIFICATION DEMANDS TO INGROOVES**

25 26. In July 2012, a composer named Norman Blagman filed a putative
 26 class action against the Retailers, asserting claims of copyright infringement against
 27 them based on their alleged unlicensed or unauthorized reproduction, distribution,
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1 and sale of copyrighted musical compositions allegedly owned by Blagman and the
 2 putative class members.

3 27. Shortly after being sued, the Retailers (except Amazon.com Inc.) sent
 4 indemnification demands to INgrooves between August and October 2012,
 5 demanding that INgrooves defend and indemnify them in connection with the
 6 *Blagman* suit. Those demands were made pursuant to indemnification provisions in
 7 each of INgrooves' agreements with the Retailers, as well as INgrooves'
 8 representations and warranties in those agreements that it had all necessary rights,
 9 authorizations, and licenses to distribute the sound recordings, and that the
 10 Retailers' authorized use of the content would not infringe any third parties' rights.

11 28. INgrooves agreed to defend and indemnify the Retailers for third-party
 12 claims based on or arising out of their unauthorized use of any content distributed
 13 by INgrooves, or any allegations that would constitute a breach of INgrooves'
 14 representations and warranties under the distribution agreements.

15 29. While INgrooves was not named as a defendant in the *Blagman* suit, at
 16 least one musical track that INgrooves distributed to one or more of the Retailers
 17 was at issue in that case. In addition, the Retailers claimed that INgrooves had
 18 distributed some of the musical tracks covered by the putative class.

19 **DEFENDANT'S BREACHES OF ITS CONTRACTUAL DUTIES**

20 30. In September 2012, while the Policy was in effect, INgrooves timely
 21 notified Defendant of the Retailers' indemnification demands. A few years later,
 22 after the filing of a Third Amended Class Action Complaint in the *Blagman* suit in
 23 April 2015, INgrooves reiterated its request to Defendant for coverage under the
 24 Policy.

25 31. INgrooves and Defendant engaged in a series of communications over
 26 the subsequent eight months, during which Defendant often failed to respond to
 27 INgrooves for long periods of time and ignored INgrooves' repeated requests for a
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1 coverage determination. Finally, on December 21, 2015, Defendant agreed to
 2 defend INgrooves pursuant to the Electronic Media Activities coverage set forth in
 3 Insuring Agreement B of the Policy. A true and correct copy of Defendant's
 4 December 21, 2015 letter is attached hereto as **Exhibit B** and is incorporated herein
 5 by reference. Although Defendant reserved its rights under a few exclusions,
 6 including the Contract Exclusion, it plainly had determined that the exclusion was
 7 not a valid basis to deny coverage entirely. Otherwise, Defendant would have
 8 denied coverage in December 2015.

9 32. Even though nothing occurred between December 2015 and August
 10 2016 to change the operative analysis regarding the inapplicability of the Contract
 11 Exclusion, on August 8, 2016, Defendant abruptly reversed course and sent another
 12 letter to INgrooves in which Defendant denied coverage based solely on the
 13 Contract Exclusion. A true and correct copy of Defendant's August 8, 2016 denial
 14 letter is attached hereto as **Exhibit C** and is incorporated herein by reference.

15 33. In its August 8, 2016 denial letter, Defendant conceded that: (a) the
 16 indemnification claims against INgrooves constitute Claims for Electronic Media
 17 Activities under the Policy; (b) the Claims were made and reported during the
 18 Policy Period; and (c) the Claims arose from alleged Wrongful Acts, which took
 19 place after the Retroactive Date (April 23, 2007) and before the end of the Policy
 20 Period (April 23, 2013). (Ex. C at 9-10.) Defendant also acknowledged that the
 21 Policy provides coverage for copyright infringement claims, and that the Retailers
 22 were alleging that INgrooves delivered to them "allegedly infringing musical
 23 compositions without proper licenses and authorizations, thereby causing the
 24 [Retailers] to infringe on third parties' copyrights." (*Id.* at 10.) Defendant further
 25 stated that the indemnification demands are based on allegations that "INgrooves
 26 breached its warranties" to the Retailers by delivering the infringing compositions.
 27 (*Id.*)

28

1 34. Thus, Defendant already has conceded coverage here based on
 2 INgrooves' representations that the compositions would not infringe any third
 3 parties' copyrights, and because of the occurrence of a Media Injury as defined in
 4 the Endorsement — i.e., the alleged breach of any express or implied contract
 5 arising out of the submission of any material, idea or process, including any
 6 musical or analogous material or process used by INgrooves or others.

7 35. Nevertheless, in its August 8, 2016 letter, Defendant wrongfully and
 8 unreasonably denied coverage based upon the Contract Exclusion.

9 36. INgrooves responded to Defendant's August 8, 2016 denial on August
 10 22, 2016, explaining that the Contract Exclusion does not apply because it conflicts
 11 with, and is superseded by, the coverage afforded under the Media Injury
 12 Endorsement. A true and correct copy of INgrooves' August 22, 2016 letter is
 13 attached hereto as **Exhibit D** and is incorporated herein by reference. Indeed, the
 14 coverage granted to INgrooves for claims alleging breach of contract is contained in
 15 an Endorsement, which is more specific and trumps any conflicting language
 16 contained in the more general language found in the Contract Exclusion, which is
 17 part of the general Policy form. *Aerojet-General Corp. v. Transport Indem. Co.*, 17
 18 Cal.4th 38, 50 n.4 (1997) (terms in an endorsement control over inconsistent
 19 provisions in the printed policy form); *McConnell v. Underwriters at Lloyds of*
 20 *London*, 56 Cal.2d 637, 640 (1961) ("If there is a conflict in meaning between an
 21 endorsement and the body of the policy, the endorsement controls.").

22 37. Defendant responded to INgrooves on September 12, 2016 that the
 23 Media Injury Endorsement had not been triggered by the Retailers' indemnification
 24 demands. A true and correct copy of Defendant's September 12, 2016 letter is
 25 attached hereto as **Exhibit E** and is incorporated herein by reference. Defendant's
 26 denial of coverage under the Media Injury Endorsement is meritless and
 27 unreasonable. Defendant has twisted and distorted the plain language of the Policy

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to deny coverage in violation of its contractual duties and the implied covenant of good faith and fair dealing.

38. Defendant denied coverage even though its interpretation of the Policy is untenable and frustrates the very purpose for which INgrooves purchased the Policy and paid premiums. In essence, Defendant contends that INgrooves purchased a policy that does nothing to protect INgrooves' operation of its core business — the distribution of sound recordings to digital music retailers.

39. Furthermore, Defendant's purported grounds for denying coverage demonstrate its failure to properly investigate INgrooves' claim, as it is apparent that Defendant has a complete lack of understanding of the coverage provided to INgrooves under the Policy, the impetus for the indemnification demands, or the nature of INgrooves' business. The Retailers' indemnification demands against INgrooves entail alleged breaches of distribution agreements providing warranties to the Retailers with respect to the clearance of rights in connection with the submission of digital music content. Defendant easily would have known these facts had it conducted even the most basic investigation of the indemnification claims instead of focusing all of its efforts and resources to concocting reasons to deny coverage.

40. Defendant's bad faith conduct, coupled with its breaches of the Policy's coverage provisions, has caused substantial harm and damage to INgrooves.

FIRST CLAIM FOR RELIEF
(Breach of Contract Against Defendant)

41. INgrooves repeats and realleges each and every allegation contained in Paragraphs 1 through 40 above as though set forth fully herein.

42. The indemnification demands seek Damages on account of Wrongful Acts under the Policy. And, Defendant is obligated under the Policy to pay in full

all sums that INgrooves became obligated to pay to the Retailers for INgrooves' portion owing of the settlement of the *Blagman* suit.

43. Defendant also had duties to pay defense costs and indemnify INgrooves in connection with the indemnification demands. Defendant's defense duty was owed immediately and its commitment to pay defense costs was a significant right afforded to it under the Policy. Indeed, Defendant's duties arose at the time of notice and continue until INgrooves has been fully reimbursed for all of the defense fees and costs and for the settlement amount INgrooves must pay.

44. Defendant breached its duties when it: (a) refused to pay any portion of the defense costs or settlement owing; and (b) interpreted the Policy in an unreasonable manner to deprive INgrooves of the insurance coverage for which it paid.

45. INgrooves has duly performed and/or complied with all terms and conditions required by the Policy that were not excused by Defendant's breaches and/or other conduct.

46. As a direct, proximate and foreseeable result of Defendant's breaches of its duties under the Policy, Defendant has deprived INgrooves of the benefit of insurance coverage for which INgrooves paid substantial premiums. INgrooves has been damaged in an amount excess of the Court's jurisdictional limits, plus interest.

SECOND CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Defendant)

47. INgrooves repeats and realleges each and every allegation contained in Paragraphs 1 through 46 above as though set forth fully herein.

48. Implied in the Policy sold by Defendant were covenants that Defendant would act in good faith and deal fairly with its insured, that Defendant would do nothing to interfere with the rights of INgrooves, its insured, to receive

1 the benefits of the Policy, and that Defendant would give at least the same level of
 2 consideration to its insured's interests as it gives to its own interests.

3 49. Defendant had a duty to conduct a thorough investigation of
 4 INgrooves' claims for coverage and seek facts that would support INgrooves'
 5 claim. INgrooves is informed and believes, and on that basis alleges, that instead of
 6 doing so, and before conducting any meaningful or objective investigation of
 7 INgrooves' claims, Defendant denied coverage and wrongfully adopted the position
 8 that the Contract Exclusion precludes coverage.

9 50. In the course of denying coverage and failing and/or refusing to defend
 10 or indemnify INgrooves, Defendant has breached the implied covenant of good
 11 faith and fair dealing by, among other things:

- 12 (a) failing and refusing to pay any portion of the defense costs owed by
 13 INGrooves to the Retailers in response to their indemnification
 14 demands for defense of the *Blagman* suit, without any basis in fact or
 15 law to do so, despite the fact that Defendant originally had conceded
 16 that the indemnification demand were potentially covered;
- 17 (b) wrongfully refusing to indemnify INgrooves for the amount it will pay
 18 in settlement of the *Blagman* suit to the Retailers, up to the limits of
 19 liability of the Policy;
- 20 (c) failing to conduct a full and thorough investigation of Retailers'
 21 Claims against INgrooves in connection with the *Blagman* suit and
 22 facts surrounding the dispute, and asserting grounds for denying
 23 coverage based on its inadequate investigation;
- 24 (d) wrongfully asserting grounds for denying coverage that Defendant
 25 knows are not supported by, and in fact are contrary to, the terms of
 26 the Policy, the law, insurance industry custom and practice, and the
 27 facts;

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- (e) failing to fully inquire into possible bases that might support coverage for the indemnification demands from the Retailers for the *Blagman* litigation;
- (f) failing to honor its promises and representations in its Policy that it would pay defense costs and indemnify for claims alleging “Wrongful Acts;”
- (g) wrongfully and unreasonably engaging in improper delays, failures to perform, and delay tactics;
- (h) wrongfully and unreasonably forcing INgrooves to incur the expense of filing the present action to recover benefits owing under the Policy;
- (i) wrongfully and unreasonably placing its own interests above those of its insured; and
- (j) otherwise acting as alleged above.

51. Defendant did the things and committed the acts alleged above for the purpose of consciously withholding from INgrooves the rights and benefits to which it is entitled under the Policy.

52. Defendant's acts are inconsistent with the reasonable expectations of INgrooves, violate established claims practices and legal requirements, contravene the express terms of Defendant's Policy, and constitute bad faith.

53. As a direct and proximate result of Defendant's acts, INgrooves has been damaged in an amount in excess of the Court's jurisdictional limits. These damages include the amount of the loss that Defendant is obligated to pay under the Policy, plus interest, in an amount to be proven at trial.

54. Pursuant to the holding in *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985), INgrooves is entitled to recover all attorneys' fees that it reasonably has incurred, and continues to incur, in its efforts to obtain the benefits of insurance that Defendant has withheld, and continues to withhold, wrongfully and in bad faith.

The precise amount of those fees is presently unknown and will be ascertained at the appropriate time.

55. Defendant's conduct is despicable and has been done with a conscious disregard of the rights of INgrooves, constituting oppression, fraud, and/or malice, in that Defendant engaged in a series of acts designed to deny the benefits due under its Policy. Specifically, Defendant, by acting as alleged above, in light of information, facts, and relevant law to the contrary, consciously disregarded the rights of INgrooves and forced it to incur financial losses, which continue to accrue, without any assistance from Defendant, thereby inflicting financial damage on INgrooves. Defendant has ignored the interests and concerns of INgrooves with the requisite intent to injure within the meaning of California Civil Code § 3294. Therefore, INgrooves is entitled to recover punitive damages from Defendant in an amount that is sufficient to punish and make an example of Defendant and in order to deter similar conduct in the future.

THIRD CLAIM FOR RELIEF

(Declaratory Relief Against Defendant and Does 1 through 10)

56. INgrooves repeats and realleges each and every allegation contained in Paragraphs 1 through 55 above as though set forth fully herein.

57. INgrooves is informed and believes, and on that basis allege, that Defendant and Does 1 through 10 dispute that INgrooves is entitled to insurance coverage for the indemnification demands. Therefore, an actual and justiciable controversy exists between INgrooves, on the one hand, and Defendant and Does 1 through 10, on the other hand, concerning the matters alleged herein.

58. INgrooves therefore seeks a judicial declaration as to the duties of Defendant, and Does 1 through 10, including the duty to pay defense costs and to indemnify INgrooves under the Policy, confirming that INgrooves' contentions, as stated above, are correct. A declaration is necessary at this time in order that the

1 parties' dispute may be resolved and that they may be aware of their respective
2 rights and duties.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, INgrooves prays for judgment as follows:

5 1. On the First Claim for Relief, for damages, plus interest, according to
6 proof at the time of trial, but in excess of the jurisdictional limit;

7 2. On the Second Claim for Relief:

8 a. For damages, plus interest, according to proof at the time of
9 trial;

10 b. For reasonable attorneys' fees and expenses incurred in
11 obtaining the benefits due under the Policy, plus interest;

12 c. For punitive damages in an amount to be determined at the time
13 of trial;

14 3. On the Third Claim for Relief, for a declaration in accord with
15 INgrooves' contentions stated above;

16 4. On all claims for relief:

17 a. For costs of suit incurred herein;

18 b. Interest; and

19 c. For such other, further, and/or different relief as may be just and
20 proper.

21
22 Dated: June 6, 2017

MANATT, PHELPS & PHILLIPS, LLP
Susan Page White
Emil Petrossian

23
24
25 By: /s/ Susan Page White

26 Susan Page White
27 *Attorneys for Plaintiff*
28 ISOLATION NETWORK, INC.
D/B/A INGROOVES

DEMAND FOR JURY TRIAL

Plaintiff Isolation Network, Inc. d/b/a INgrooves hereby demands a trial by jury on all claims, defenses, and issues that may be so tried.

Dated: June 6, 2017

MANATT, PHELPS & PHILLIPS, LLP
Susan Page White
Emil Petrossian

By: /s/ Susan Page White

Susan Page White
Attorneys for Plaintiff
ISOLATION NETWORK, INC.
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